



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 22 2011

REPLY TO THE ATTENTION OF:

WW-16J

Colonel Luke T. Leonard
U.S. Army Corps of Engineers, Louisville District
600 Dr. Martin Luther King Place
Louisville, Kentucky 40202

Re: Farmersburg Bear Run Amendment 5 / Peabody Midwest Mining, LLC

Dear Colonel Leonard:

The U.S. Environmental Protection Agency has received the Clean Water Act Section 404 permit application dated September 2, 2011 for the above-referenced project. EPA recommended the preparation of an Environmental Impact Statement (EIS) during the review of the Bear Run Amendment 4 project. After reviewing the materials provided for the proposed Bear Run Amendment 5, we feel it is necessary to restate our previous recommendation that the U.S. Army Corps of Engineers prepare an EIS for the Bear Run Mine project.

The applicant, Peabody Midwest Mining, LLC (Peabody), is proposing to impact 498,783 linear feet (lf) of streams and 158.63 acres of wetlands in Sullivan County, Indiana approximately 6 miles southwest of the town of Dugger. The purpose of the project (Bear Run Amendment 5) is to expand surface coal mining activities by 7,252.2 acres on the Bear Run Mine in the Buttermilk Creek, Middle Fork Creek, Maria Creek, Pollard Ditch, and Brewer Ditch-Black Creek watersheds (tributaries of the Lower White River and Middle Wabash-Busseron). Operation of the Amendment 5 area is tentatively scheduled for 2015-2032. Two previous Section 404 permits (Bear Run Amendments 1-3 [a.k.a. Bear Run East Pit] and Bear Run Amendment 4) are associated with this project, totaling approximately 249,471 lf of stream impacts and 89 acres of wetland impacts over 7,142.5 acres of mine area.

Peabody is proposing to remove all economically recoverable coal from the Amendment 5 area. Coal would be removed during excavation of the area, processed, and sold. The area would be returned to approximate original contours, covered with stockpiled soil materials, revegetated, and returned to an approved post-mine land use as required by the Surface Mining Control and Reclamation Act.

Preparation of an Environmental Impact Statement

Section 102(2)(C) of the National Environmental Policy Act (NEPA) identifies major federal actions that "significantly" affect the quality of the human environment requiring an EIS. In regulations the Council on Environmental Quality promulgated under NEPA, significantly is

defined by two criteria: context and intensity of impacts of the proposed project¹. Context refers to the affected environment in which a proposed action would occur and intensity means the degree to which the proposed action would include one or more of the factors listed below, among others. Bear Run Amendment 5, as currently proposed, appears to exceed thresholds for significance based on the context and intensity of the project. Therefore, EPA strongly recommends that the Corps prepare an EIS for this project for the following reasons:

- **Unique or unknown risks:** As stated on the applicant's website, the Bear Run complex is slated to be the largest surface coal mine east of the Mississippi River². Because it will be the largest surface mine east of the Mississippi River, impacts and risks are not fully understood and will likely present unique challenges³, such as restoration of headwater systems.
- **Unique characteristics of the geographic area:** Bear Run Amendment 5 itself would impact approximately 158 acres of wetlands and 498,783 linear feet of streams in the Middle Wabash-Busseron and Lower White River watersheds. Because the proposed project footprint impacts wetlands and ecologically critical areas⁴, EPA views the preparation of an EIS as appropriate.
- **Cumulative Impacts:** Previous segments of the Bear Run complex have already been permitted to impact 249,471 linear feet of streams and 89 acres of wetlands. Amendment 5 would impact an additional 498,783 linear feet of streams and 158 acres of wetlands, bringing the total proposed Bear Run complex aquatic impacts to 748,254 linear feet of streams and 247 acres of wetlands. According to the applicant, if Amendment 5 were permitted, the entire Bear Run Mine project would impact approximately:
 - 22.7 percent of the Middle Fork Creek watershed (051201111510),
 - 20.7 percent of the Headwaters Maria Creek watershed (051201111801),
 - 20.4 percent of the Brewer-Ditch Black Creek watershed (051202020603),
 - 14.6 percent of the White River (Pollard Ditch) watershed (051202020801),
 - 10.3 percent of the Buttermilk Creek watershed (051201111507),
 - 3.6 percent of the Headwaters Black Creek watershed (051202020601), and
 - 0.1 percent of the Singer Ditch-Black Creek watershed (051202020605).

These impacts are likely to be cumulatively significant⁵. We also understand that Peabody briefly discussed a 6th amendment to the Bear Run Mine project that would impact additional waters of the U.S. during the pre-application meeting for the Bear Run Amendment 5 project at your field office in Newburgh, Indiana on September 20, 2011. Given this, EPA views these plans as reasonably foreseeable⁶, which should be included in the cumulative impacts analysis of an EIS. Please note that EPA will be submitting detailed comments on the forthcoming Public Notice and associated Section 404 permit application materials for Amendment 5. We are available to discuss the contents of this letter with you at your convenience. Please contact Peter Swenson, at

¹ 40 CFR §1508.27

² <http://phx.corporate-ir.net/phoenix.zhtml?c=129849&p=irol-newsArticle&ID=1266889&highlight=>

³ 40 CFR § 1508.27(b)(5)

⁴ 40 CFR § 1508.27(b)(3)

⁵ 40 CFR § 1508.27(b)(7)

⁶ 40 CFR § 1508.7

(312) 886-0236 with any questions you may have regarding Section 404, or Kenneth Westlake, at (312) 886-2910 with any questions regarding NEPA. Thank you in advance for your consideration.

Sincerely,



for Tinka G. Hyde
Director, Water Division

cc: Scott Pruitt, Field Supervisor
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